It would be absurd to say that a pension when paid cannot be attached in the absence of the clearest legislative provision. Otherwise a pensioner could get credit and the money in his pocket would be protected against his creditor.

I have no doubt that an order could be made directing the bankrupt to pay such sum as the Court thought proper out of each payment she received. This was the course followed in *Hollinshead* v. *Hazleton*, (1916) A.C. 428; 2 Han. Co. & Wg. Up. C. 85 and, I gather in *In re Saunders*, (1895) 2 Q.B. 428 which related to an Indian pension.

In my opinion s. 5 of the Sultan Hussain Ordinance has no application in bankruptcy. The purport of that section is illustrated by *Lucas* v. *Harris*, 18 Q.B.D. 117 as explained in *In re Saunders*. The appropriation of unpaid government pensions for the payment of a bankrupt's debts is regulated by s. 55, sub-s. 3 of the Bankruptcy Ordinance. I have power to make an order under that section directing that a portion of the money payable by the Government to the bankrupt be paid to the Official Assignee for the benefit of the bankrupt's creditors, because the money is not a mere gratuity as in *In re Wicks*, 17 Ch.D. 70.

Section 55, sub-s. 2 has no application to pensions so consent is not necessary for the Court's order under sub-s. 3.

It is advisable, however, that the Court be informed by the Treasury of the exact amount payable to the bankrupt for her own benefit. I have consulted the Treasury and am informed that $264 is payable to her every month. Of this sum the Colony pays $144 and Johore $120. The bankrupt admits she receives this $264 per month. She supports five small children and an aged aunt. Having regard to this lady's station in life and to her age she will probably find it difficult to economise, but I have no doubt that economies can be effected.

I direct the Accountant-General of the Straits Settlements to pay to the Official Assignee, Singapore for the benefit of the bankrupt's creditors the sum of thirty dollars ($30) per month out of the sum payable each month to Tengku Zainab binte Sultan Ali under the Sultan Hussain Ordinance.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

November, 21, 1938.

IN RE THE ESTATE OF KHOO KHYE CHEAR DECEASED.

ROBERT CECIL RUSSELL v. KHOO BOC BOON AND OTHERS.

[PENANG ORIGINATING SUMMONS No. 108 of 1938]

Will — Construction — Whether "my male issue" includes adopted children and their issue —Wills Ordinance (Chapter 53), s. 27.

In interpreting Chinese Wills in this colony the words "children" and "sons" have in some cases been held to apply to adopted children and adopted sons, where such an intention on the part of the testator was indicated. The same principles cannot be extended to the interpretation of the language of an Ordinance and accordingly adopted children cannot be included in the words "child or other issue of the testator" in s. 27 of the Wills Ordinance.

Also held, upon the construction of the will before the Court that the words "my male issue" used in connection with the bequest of a house and furniture meant the legitimate male descendants of the testator living at the date of his death.

The testator by his will bequeathed unto his wife Ang Guan Neoh during her life "my house No. 62 Love Lane free from incumbrances with the furniture therein contained" &c. Evidence was given to the Court that the testator had never owned No. 62 Love Lane but that he did own No. 62 Muntri Street and that the same Chinese characters were used both for Love Lane and Muntri Street.

Held, that the land and premises No. 62 Muntri Street and the furniture therein passed under the gift in the Will of No. 62 Love Lane with the furniture therein.

ADJOURNED SUMMONS.

R. D. Hume for plaintiff.

N. Raghavan for the Registrar appointed to represent the Estate of Khoo Boo Keng deceased.

Lim Cheng Ean for second defendant representing the class of male children of the testator.

Cur. Adv. Vult.

HORNE, J.—*Prayer 1.* On this prayer in view of the evidence given before me by the Court Chinese Interpreter, Martinez Chan, that amongst the Chinese, the name by which they speak of Love Lane or Muntri Street is the same; and having regard to the fact that the testator never lived at No. 62 Love Lane, but did live at and owned No. 62, Muntri Street, which was conveyed to him on the 28th October 1897, (the day before the Will was made) I am satisfied that the bequest (sic) of the house "No. 62, Love Lane with the furniture therein contained" is one and the same property as No. 62, Muntri Street, Penang.

I therefore hold that the land and premises No. 62, Muntri Street, Penang, and the furniture therein, passes under the "bequest" in the will of No. 62, Love Lane with the furniture therein.

Prayers 2 to 6. These prayers depend upon the construction of the words "my male issue" used by the testator in connexion with the bequest of the house and furniture, in the will of the 29th October 1897.

The testator appointed his wife Ang Guan Neoh as his executrix; and his adopted son Khoo Boo Kang and his sons Khoo Boo Keow, Khoo Boo Boon and Khoo Boo Siew as his executors.

On the 22nd May 1928, the testator executed a codicil which altered the first portion of the residuary clause in the will, but confirmed the will in other respects. In the codicil, he referred to the payment of certain legacies *and other bequests* and recited how, under the original will, the residue was to have been disposed of.

The codicil states that since the will was made, the testator had adopted Khoo Boo Hooi; that his executrix Ang Guan Neoh had died; and that two of his executors, namely Khoo Boo Kang (his adopted son) and Khoo Boo Keow were also both dead.

Clause 1 of the codicil revokes the bequest of the residuary estate contained in the will; and in substitution of the provision that one-fourth share was to go to his wife (who was then dead) and three-fourths to the testator's former, but then deceased, adopted son and his other named sons and future sons, he devised and bequeathed the whole of his residuary estate to "my five sons", (who were alive at the date of the codicil) naming four sons (1) Khoo Boo Boon, (2) Khoo Boo Siew, (3) Khoo Boo Tee and (4) Khoo Boo Hock (Called 'Khoo Boo Pak' in the Will), and his adopted son Khoo Boo Hooi, who had been adopted since the date of the will.

It will be noted that the codicil was confined strictly to the residuary estate of the testator, the disposition of the other property in accordance with the terms of the will being confirmed. Consequently, the "bequest" of the house and furniture was unaffected by the codicil.

The house and furniture were left to the testator's wife Ang Guan Neoh for life and after her decease, to "my adopted son Khoo Boo Kang and my male issue as tenants in common."

Khoo Boo Kang died in about the year 1922, and the testator's wife on the 4th August 1927.

In view of the fact that Khoo Boo Kang predeceased both the testator's wife and the testator, I fail to see how he acquired any interest under the will. Had the testator predeceased his wife, and she had succeeded to her life interest in the house and furniture, Khoo Boo Kang would then have had a vested interest in them, in accordance with this clause of the will, but as he was already dead before the wife succeeded, his share must necessarily have lapsed and fell into the residue under the second and unrevoked part of the residuary clause of the will, which so provided, in the event of a beneficiary dying before his interest had vested.

This brings me to the consideration of what the testator intended, in the clause in question, by the words "my male issue."

In the clause appointing executors, the testator named Khoo Boo Kang as his "adopted son" and then referred to "my sons" naming three of them. In the bequest of the house and furniture he refers to "my adopted son Khoo Boo Kang and my male issue as tenants in common." In the residuary clause of the will he left three-fourths to Khoo Boo Kang (by name) and five named sons, "and any sons born to me after the date of this will." In the last clause of the will he referred to "my male minor children."

The will was drawn in English: presumably by the solicitor who was one of the attesting witnesses. Had this been a "home-made" will, I should be disposed to think that by the words "my male issue" the testator intended to mean his sons as tenants in common with the named adopted son.

Since, however, this word "issue" was introduced, I must hold that it was used for some purpose which presumably was explained to the testator, and that, following the case of *Davenport* v. *Hanbury*, 30 E.R. 999 quoted in *Jarman* on Wills (7th ed. at p. 1562) in which a bequest to "M., or her issue" was held to include grandchildren of the testator; the bequest of the house and furniture in the present case will pass to the legitimate male descendants of the testator living at the date of his death; there being nothing in the context to confine the word *issue* to *children* in this particular clause.

Mr. Raghavan for the estate of Khoo Boo Kang and his issue, has argued that his clients are entitled to share in the house under s. 27 of the Wills Ordinance, seeking to include adopted sons under the words "child or other issue of the testator."

I do not consider his contention well-founded. Section 27 is taken from the English Wills Act, and although in interpreting Chinese wills in this colony the words "children" and "sons" have in some cases been held to apply to adopted children and adopted sons, where such an intention on the part of the testator was indicated, the same principles cannot be extended to the interpretation of words used in an Ordiance.

To summarise prayers 2—6 of the summons:—

I hold (a) that Khoo Boo Kang's share, never having vested, lapsed and fell into residue;

(b) that the other shares in the house and furniture are divisible among the male issue of the testator who were alive at the date of the testator's death;

(c) that the words "male issue" include remoter legitimate issue of the testator living at the date of the testator's death, but does not include Khoo Boo Kang and his male issue;

(d) that such male issue are entitled to share *per capita*.

In other words, when the house and furniture are sold, the proceeds will be divided into 12 shares, one of which goes to residue, and eleven shares to the legitimate male descendants of the testator, *per capita*.

Should any dispute arise as to the number of shares, or as to who were the sons and grandsons living at the date of the testator's death, I direct that an inquiry be held by the Registrar on these issues.

Prayer 7. The arrangement as to the division of the property is confirmed, and the administrator may transfer the remaining properties forming the residuary estate in pursuance of the agreement mentioned in prayer 7.

Prayer 8. Order in terms thereof.

Prayer 12. The costs of all parties as between solicitor and client to be paid out of the estate, Mr. Raghavan's costs to be included with those of the plaintiff.

There will be liberty to apply.

Order accordingly.

Solicitors for the plaintiff—
Hogan, Adams & Allan.

Solicitors for the Registrar—
Cheng Ean & Soon Chee.

Solicitors for the second defendant—
Raghavan & Co.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.